CR-1461

IN THE HON'B LE HIGH COURT OF CHHATTISGARH AT BILASPUR.

SECOND APPEAL NO. 111 OF 2004 Single Bench

APPELLANT
DEFENDANT NO.2 : Dev Prasad son of Bodhan Suryavanshi, (dead) wrongly written since alive Agriculturist R/o. village Kutra-Road, Tahsil Janjgir District Bilaspur (M.P.) (now Janjgir Champa C.G.)

VERSUS

RESPONDENTS :

1. Laxmi Prasad son of Shivshankar Prasad, aged 58 years.
2. Badri Prasad son of Shivshankar aged 53 years.
3. Ram Pyari Bai widow of Shiv-Shankar Prasad, aged 82 years.

All 3 resident of village Pamgarh Tahsil Pamgarh, Distt. Bilaspur (M.P.) (Now Distt. Janjgir Champa C.G.).

PLAINTIFFS

4. Ram Prasad son of Bodhan Suryavanshi (Dead).
5. Laxmi Bai widow of Bodhan Suryavanshi (dead, wrongly shown alive instead of appellant)

Both Agriculturist, R/o

DEFENDANT NO. 1 & 3

P. R. No. 504/04
Presented by Shri N. B. Agrawal
dated 19.02.04

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE.

(Claim in appeal valued at Rs. 1400/- only & C.F.Paid Rs. 146/-)

Being aggrieved with the judgment and decree dated 17-4-2000 and 19-4-2000 respectively between Laxmi Prasad and others Versus Ram Prasad and others by Smt. Anita Jha

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 111/2004

Appellant : Dev Prasad

Vs

Respondents : Laxmi Prasad & others

Shri H.B.Agrawal, Sr. Advocate with Ms. Sangeeta Mishra, Advocate.
Shri Laxmi Prasad Pandey, counsel for respondents.

JUDGMENT
(Delivered on 09/01/2006)

Heard on M (C) P No. 319/2004, an application for condonation of delay of 1311 days in filing the appeal.

2. The instant appeal is directed against the impugned judgment and decree dated 17.4.2000 passed by 6th Additional District Judge, Bilaspur by which the cross appeal preferred by the appellant has been dismissed on the ground of non compliance of the High Court's direction in the order of remand dated 7.10.1998 passed in Second Appeal No. 332/98.

3. From perusal of the record it appears that by order dated 07.10.1998 passed in Second Appeal No. 332/1998 the cross appeal preferred by appellant herein-Dev Prasad was allowed and judgment and decree dated 07.02.1998 passed in Civil Appeal No. 7-A/93 was set aside and the case was remanded to the lower appellate Court with a direction to the appellant herein -Dev Prasad to file appropriate application for removing the defect in the cross objection of Civil Appeal No. 7-A/93 on account of death of Ram Prasad (respondent No.4 herein) and Laxmi Bai (respondent No. 5 herein). After the order of remand the appellant herein-Dev Prasad moved an application under Order 22 Rule 3 of the C.P.C. on

02.02.2000 for bringing L.Rs. of deceased/defendants No. 1 and 3 on record. However, the above application was rejected by the lower appellate Court on the ground that in the said application the date of death of the deceased/defendants No. 1 and 3 is not mentioned and no application for condoning the delay in filing the above application for bringing L.Rs. on record, has been filed and there was no prayer for setting aside the abatement of the appeal, and as such on the aforesaid grounds the application preferred by the appellant-Dev Prasad under Order 22 Rule 3 of the C.P.C was rejected on 10.03.2000 and accordingly, the cross appeal has been dismissed for non-compliance of the directions of the High Court in the remand order, with an observation that judgment and decree dated 14.02.1994 passed in Civil Appeal No. 7-A/93 by VI Additional Sessions Judge, Bilaspur shall be deemed to be final.

4. Learned counsel for the appellant submits that appellant is an illiterate person and therefore, he was not able to understand pros and cons of not obeying the directions of the High Court and the Court has committed an illegality by not allowing the application for bringing L.Rs. on record as it was obligatory on the part of the lower appellate Court to consider the observations made in the judgment dated 07.10.1998 wherein it is mentioned that the judgment was nullity because of not bringing the L.Rs. of the deceased/defendants No. 1 and 3 on record. He further submitted that the appellant was not aware about the judgment and decree dated 17.04.2000 and he came to know about the same only after notice of execution.

5. On the other hand learned counsel for the respondents submits that the appellant was duly represented by his counsel who appeared before the appellate Court from 23.12.1999 to 21.02.2000 and thereafter the appellant was proceeded ex-parte on 08.03.2000, the appellant did not comply with the directions of the High Court and did not file an application for condonation of delay in filing the application for substitution of L.Rs.

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and also did not file an application for setting aside the abatement of the counterclaim and in these circumstances, there is no illegality in the impugned order. Even otherwise the explanation of delay of almost four years in filing the appeal is not sufficient and the appeal is hopelessly barred by limitation.

6. Taking into consideration the inordinate delay of almost four years in filing the appeal and further considering that the cross appeal has been dismissed by the Courts below on account of non-compliance of directions of the High Court in the remand order, the application for condonation of delay in filing the appeal is rejected.

7. Consequently, the appeal is also dismissed.

Sd/-
Dhirendra Mishra
Judge

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